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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

THE COMMONWEALTH GROUP,
LLC, and NEW RICHARD HART,

Defendants

TICONDEROGA LEASING,
HEALTHCARE CONSORTIUM 3 and
INTERNATIONAL LEASE
MANAGEMENT, LLC,

Relief Defendants.

Case No. 2:99CV692DAK

**STATUS REPORT OF THE U.S.
ATTORNEY'S OFFICE IN
RESPONSE TO THE COURT'S
ORDER OF SEPTEMBER 28, 2007**

The U.S. Attorney's Office hereby responds to this Court's Order of September 28, 2007, which "directs the U.S. Attorney's Office to provide to Mr. Michael Duncan in the Office of the Clerk of Court—by no later than October 5, 2007—its Federal Identification number or file a statement in this case as to why it refuses to provide the number."

As the U.S. Attorney's Office understands the posture of this case and this Order, the Court wants the Office of the Clerk of Court ("Clerk's Office") to transfer funds from an interest-bearing account in the Court's registry into another account from which victims in case 2:00-CR-00081-DB may be paid restitution based on this Court's entry of final judgment in this case, 2:99-CV-0692-DAK. After consulting with personnel in the accounting and financial systems division of the Administrative Office of the United States Courts ("AOUSC") and counsel for plaintiff Securities and Exchange Commission ("SEC"), the U.S. Attorney's Office has learned that providing the Clerk's Office with this office's "Federal Identification number" would not aid this effort in any way. Therefore, the U.S. Attorney's Office has not provided Mr. Duncan with its Federal Identification number.

Personnel at the AOUSC further advised this office that the Clerk's Office may require the taxpayer identification or social security number of defendant Ned Richard Hart in order to complete the desired transfer of funds. Accordingly, this office has located Mr. Hart's social security number and transmitted it to Mr. Duncan on October 5, 2007.

The apparent confusion in the Court and Clerk's Office over this matter may stem from the Court's earlier order of August 25, 2006, which directed the Clerk's Office to transfer the funds at issue to this office. No such transfer should be made, as payments for restitution should be made to the Clerk's Office pursuant to 18 U.S.C. § 3611. Accordingly, the U.S. Attorney's Office has asked counsel for the SEC to file a motion for this Court to amend its earlier order by directing the Clerk's Office to transfer the funds not to the U.S. Attorney's Office, but rather to an account within the Clerk's Office from which victims may receive restitution payments. Counsel for the SEC has agreed to file such a motion and proposed order next week.

The U.S. Attorney's Office stands ready to help the Court and the Clerk's Office ensure that crime victims receive restitution payments. However, we note that the solution in this instance lay not within the U.S. Attorney's Office or the Department of Justice, but within the AOUSC, the director of which has the duty to "[e]stablish procedures and mechanisms within the judicial branch for processing . . . restitution." 28 U.S.C. § 604(a)(18).

Respectfully submitted this 5th day of October, 2007.

BRETT L. TOLMAN
United States Attorney

/s/ Jeannette F. Swent

JEANNETTE F. SWENT
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing STATEMENT OF THE U.S. ATTORNEY'S OFFICE IN RESPONSE TO THE COURT'S ORDER OF SEPTEMBER 28, 2007 was mailed postage prepaid, delivered through interoffice mail, or electronically filed to all parties named below, this 5th day of October, 2007.

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